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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

In re: Kia Engine Litigation

CASE NO. 8:17-CV-00838-JLS-JDE

**ORDER (1) CONDITIONALLY  
GRANTING PLAINTIFFS'  
UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT (Doc.  
112); AND (2) SETTING A FINAL  
FAIRNESS HEARING FOR  
NOVEMBER 13, 2020, AT 10:30 A.M.**

Before the Court is Plaintiffs’ unopposed Motion for Preliminary Approval of Class Action Settlement. (Mot., Doc. 112.) Plaintiffs seek preliminary approval of a proposed class action settlement of claims against Defendants Kia Motors America, Inc., Kia Motors Corporation, Hyundai Motor America, Inc., and Hyundai Motor Company, Ltd. arising out of Defendants’ alleged failure to disclose a material defect in their Theta 2.0-liter and 2.4-liter gasoline direct injection engines (the “GDI Engines”). (Amended Consolidated Class Action Complaint (“Compl.”) ¶ 2, Doc. 84.) In the instant Motion, Plaintiffs ask the Court to (1) preliminarily approve the terms of the class action settlement; (2) certify the proposed class for settlement purposes; (3) appoint Class Representatives;<sup>1</sup> (4) appoint Matthew D. Schelkopf of Sauder Schelkopf, Adam Gonnelli of The Sultz Law Group, Bonner Walsh of Walsh PLLC, and Steve W. Berman of Hagens Berman Sobol Shapiro LLP as Class Counsel; (5) authorize R.L Polk & Company, or a similar third party, to compile and provide information on Class Members’ identities to Defendants; (6) approve the form and manner of class notice; and (7) schedule a final fairness hearing. (Proposed Order ¶¶ 3-6, 11, 12, Doc. 112-5.) On December 13, 2019, the Court held a hearing on the matter. At the hearing and by written order, the Court directed the parties to meet and confer regarding the Settlement Agreement’s “Mutual Release” language to ensure that its scope was not overly broad. (*See* Doc. 120.) The parties also filed supplemental papers addressing the Court’s concerns regarding (1) Defendants’ proposed self-administration of the settlement and (2) the deadline for the submission of Claims under the Settlement Agreement. (*See* Order on Claims Administration, Doc. 126; Hyundai Self-Administration Supp. Brief, Doc. 127; Supplemental Schelkopf Decl., Doc. 129.) In response to the Court’s concerns, the parties modified the release provision and Claims submission

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<sup>1</sup> Plaintiffs seek to appoint the following individuals as Class Representatives: Cara Centko, Jenn Lazar, Christopher Stanczak, Rose Creps, James Kinnick, Wallace Coats, Maryanne Brogan, Andrea Smolek, Danny Dickerson, Robert Fockler, Amy Franklin, Donald House, Dave Loomis, Joseph McCallister, Arron Miller, Ricky Montoya, Lynn North, Mark Rice, Reid Schmitt, James Smith, and Chris Stackhouse.

1 deadline. (*See* Revised Settlement Agreement, Doc. 128-1.) Having read and considered  
 2 the papers on file, held a hearing, and taken the matter under submission, the Court  
 3 CONDITIONALLY GRANTS Plaintiffs’ Motion and sets a final fairness hearing for  
 4 November 13, 2020, at 10:30 a.m.

## 5 6 **I. BACKGROUND**

7 Plaintiffs Centko and Lazar filed a putative class action against Kia Motors  
 8 America, Inc. on May 10, 2017. (Centko-Lazar Compl., Doc. 1.) They alleged that Kia  
 9 vehicles using Theta 2.0 and 2.4-liter engines were plagued by a defect whereby the  
 10 “connecting rod bearings” fracture and cause contaminated engine oil to circulate  
 11 throughout the engine, resulting in “restricted and inadequate ... lubrication,” and  
 12 ultimately engine failure. (*Id.* ¶¶ 21-23.) On October 2, 2017, the Court granted a  
 13 stipulation to consolidate the Centko-Lazar action with a similar putative class action  
 14 brought by Plaintiffs Stanczak and Creps, *Christopher Stanczak et al v. Kia Motors*  
 15 *America, Inc.*, No. 8:17-cv-01365-JDS-JDE (C.D. Cal. 2017), which involved allegations  
 16 concerning the same defect in Kia vehicles using Theta 2.0 and 2.4-liter engines. (Doc.  
 17 53.) On August 7, 2018, the Court granted a stipulation to further consolidate the action  
 18 with three additional cases brought against Kia and Hyundai, alleging the very same  
 19 engine defect: (1) *Wallace Coats et al. v. Hyundai Motor Company, Ltd. et al.*, No. 8:17-  
 20 cv-02208-JLS-JDS (C.D. Cal. 2017); (2) *Maryanne Brogan v. Hyundai Motor America, et*  
 21 *al.*, No. 8:17-cv-00622-JLS-JDE (C.D. Cal. 2017); and (3) *Andrea Smolek v. Hyundai*  
 22 *Motor America, et al.*, No. 2:18-cv-05255-JLS-JDE (C.D. Cal. 2018). (Doc. 85.) The  
 23 consolidated matter, in its present form, bears the caption *In re: Kia Engine Litigation*, No.  
 24 8:17-cv-00838-JLS-JDE (C.D. Cal. 2017).

1 Plaintiffs filed their Amended Consolidated Class Action Complaint on July 31,  
 2 2018. (Compl.) They seek to represent a “nationwide class<sup>2</sup> of current and former owners  
 3 and lessees” of “Class Vehicles”<sup>3</sup> equipped with GDI Engines. (*Id.* ¶ 1.) Plaintiffs allege  
 4 that despite long-held knowledge, Defendants failed to disclose to purchasers and lessees  
 5 of Class Vehicles that the GDI Engines contain the latent defect resulting in “the restriction  
 6 of oil flow ... to vital areas of the engine,” and ultimately causing “vehicle stalling during  
 7 operation and catastrophic engine failure.” (Compl. ¶ 2.) Accordingly, Plaintiffs assert  
 8 that this engine defect creates an “increased risk of accident, injury, or death” and  
 9 “diminish[es] the intrinsic and resale value of the Class Vehicles.” (*Id.* ¶¶ 3-4.) They  
 10 further allege that Defendants actively concealed information about the defect and  
 11 “routinely refused to repair the Class Vehicles without charge” or even “disclose the defect  
 12 when Class Vehicles displaying symptoms consistent with the defect [were] brought in for  
 13 service, instead choosing to ignore the defect until it ... caused significant mechanical  
 14 problems necessitating costly repairs.” (*Id.* ¶ 5.) Plaintiffs bring claims for: (1) violation  
 15 of California’s Consumer Legal Remedies Act (Cal. Civ. Code § 1750, et seq.); (2)

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17 <sup>2</sup> For the purposes of the instant Motion for Preliminary Approval, “‘Settlement Class’ or ‘Class’  
 18 refers to: All owners and lessees of a Class Vehicle who purchased or leased a Class Vehicle in  
 19 the United States, including those that were purchased while the owner was abroad on active U.S.  
 20 military duty, but excluding those purchased in U.S. territories and/or abroad.” (Revised  
 Settlement Agreement at 4, Doc. 121-1.)

21 <sup>3</sup> “‘Class Vehicles’ refer to all 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, and certain 2019  
 22 model year Hyundai Sonata vehicles, all 2013, 2014, 2015, 2016, 2017, 2018, and certain 2019  
 23 model year Hyundai Santa Fe Sport vehicles, all 2014, 2015, 2018, and certain 2019 model year  
 24 Hyundai Tucson vehicles, all 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, and certain 2019  
 25 model year Kia Optima vehicles, all 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, and certain  
 26 2019 model year Kia Sorento vehicles, and all 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018,  
 27 and certain 2019 model year Kia Sportage vehicles, originally equipped with or replaced with a  
 genuine Theta II 2.0 liter or 2.4 liter gasoline direct injection engine within OEM specifications,  
 that were purchased or leased in the United States, excluding the territories, and including those  
 that may have been purchased while the owner was abroad on active U.S. military duty. For 2019  
 model year vehicles listed above, the Class shall include those vehicles that were manufactured  
 before the Knock Sensor Detection System technology described in this agreement was  
 incorporated into their production.” (Revised Settlement Agreement at 4-5.)

1 violation of California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200); (3)  
 2 violation of California False Advertising Law (Cal. Bus. & Prof. Code § 17500, et seq.);  
 3 (4) violation of the Song-Beverly Act – Breach of Implied Warranty (Cal. Civ. Code §§  
 4 1792, 1791.2, et seq.); (5) violation of the Maine Unfair Trade Practice Act (5 Me. Rev.  
 5 Stat. § 205A, et seq.); (6) violation of the Illinois Consumer Fraud and Deceptive Practices  
 6 Act (85 ILCS 505/1 et seq. and 720 ILCS 295/1a); (7) breach of express warranty; (8)  
 7 breach of implied warranty; (9) breach of written warranty under the Magnuson-Moss  
 8 Warranty Act (15 U.S.C. § 2301, et seq.); (10) common law fraud; (11) breach of the duty  
 9 of good faith and fair dealing; and, (12) unjust enrichment. (*Id.* ¶¶ 144-248.)

10 Defendants Hyundai Motor America, Inc., Hyundai Motor Company, Ltd., and Kia  
 11 Motors America, Inc. filed Motions to Dismiss on September 4, 2018. (Docs. 86, 88.) On  
 12 October 9, 2018, Plaintiffs opposed those Motions. (Docs. 93, 94.) Those Motion were  
 13 not decided, as the Court granted the parties’ repeated stipulations to continue the  
 14 calendared hearings in light of the parties ongoing settlement efforts. (*See* Docs. 97-109.)  
 15 Plaintiffs’ counsel “met and conferred with counsel for Defendants on multiple occasions,  
 16 including with an engineering representative from HMA and KMA present, regarding the  
 17 allegations in the consolidated action, the potential defenses of HMA and KMA, and  
 18 potential resolution.” (Mot. at 3.) “These meetings between counsel culminated in a  
 19 mediation session before Honorable Ronald M. Sabraw (Ret.) of JAMS on December 21,  
 20 2018, where the parties settled in principle.” (*Id.*) On October 10, 2019, Plaintiffs filed  
 21 their unopposed Motion for Preliminary Approval of Class Action Settlement. (Mot.)

22 The Settlement Agreement provides consideration to the class consisting of: (1) a  
 23 lifetime warranty for the engine short block of all Class Vehicles; (2) product recalls and  
 24 improvements; (3) reimbursement for previously undertaken Qualifying Repairs<sup>4</sup>; (4)

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26 <sup>4</sup> “‘Qualifying Repair’ refers to any type of repair, replacement, diagnosis, or inspection of the  
 27 Class Vehicle short block assembly consisting of the engine block, crankshaft and bearings,  
 28 connecting rods and bearings, and pistons, due to a connecting rod bearing failure or symptoms  
 (footnote continued)

1 reimbursement for incidental expenses incurred in connection with a Qualifying Repair;  
 2 (5) “goodwill payments” provided if a “Class [M]ember is or was inconvenienced by  
 3 delays of more than 60 days when obtaining a repair from an authorized Hyundai or Kia  
 4 dealership;” (6) payments in compensation for a “loss of value for sold or traded-in  
 5 vehicles due to a Loss Event<sup>5</sup>;” (7) compensation for a “loss of vehicle by engine fire  
 6 directly caused by the Class Vehicle’s failure arising from a vehicle condition that would  
 7 have otherwise been addressed by a Qualifying Repair;” and, (8) a “rebate program.”  
 8 (Mot. at 3-9; Revised Settlement Agreement at 10-21.)

9 In return for the settlement consideration, Class Members<sup>6</sup> will irrevocably release  
 10 all claims based on:

11  
 12 (i) the facts alleged in any complaint filed in the Action and all legal claims of  
 13 whatever type or description arising out of, that may have arisen as a result of, or  
 14 which could have been brought based on, any of the facts, acts, events, transactions,  
 15 occurrences, courses of conduct, representations, omissions, circumstances or other  
 16 matters pleaded in complaints filed in the Action,

17 (ii) The release described in section (i) includes claims related to issues of oil  
 18 consumption, oil maintenance, and vehicle fires originating in the engine

19  
 20 associated with connecting rod bearing failure, but excluding Exceptional Neglect.” (Revised  
 Settlement Agreement at 8-9.)

21 <sup>5</sup> “‘Loss Event’ means any Class Vehicle incident that would have led to a Qualifying Repair  
 22 (including, but not limited to, an engine fire) but either the cost of the repair was too great or other  
 23 circumstances led the Class member to dispose of the Class Vehicle at a loss. This includes events  
 in which there was insurance coverage, but where the Class member was still not made whole by  
 such insurance payments.” (Revised Settlement Agreement at 7.)

24 <sup>6</sup> The Releasors are defined in the Settlement agreement to include “Class Representatives, the  
 25 Class members, and their future, present, and former direct and indirect parents, subsidiaries,  
 26 affiliates, divisions, predecessors, successors, and assigns, and their respective future, present, and  
 27 former officers, directors, employees, partners, general partners, limited partners, members,  
 managers, agents, shareholders (in their capacity as shareholders) and legal representatives, and  
 the predecessors, successors, heirs, executors, administrators, and assigns of each of the  
 foregoing.” (Revised Settlement Agreement at 10.)

1 compartment that are covered by and remedied under the Lifetime Warranty and  
 2 other benefits described in Sections II.A through II.H (including the Lifetime  
 3 Warranty, Repair Reimbursements, Other Repair-Related Reimbursements,  
 4 Inconvenience Due to Repair Delays, Loss of Value for Sold or Traded-In Vehicles  
 5 due to a Loss Event, Loss of Vehicle By Engine Fire, and Rebate Program).<sup>7</sup>

6  
 7 (Revised Settlement Agreement at 27-28.) The “Releasees” covered by the Settlement  
 8 Agreement are “entities that marketed the Class Vehicles, entities that designed,  
 9 developed, and/or disseminated advertisements for the Class Vehicles, HMA, Hyundai  
 10 America Technical Center, Inc. (also doing business as Hyundai-Kia America Technical  
 11 Center), HMC, KMA, KMC, all affiliates of the Hyundai Motor Group, and each of their  
 12 respective future, present, and former direct and indirect parents, subsidiaries, affiliates,  
 13 divisions, predecessors, successors, assigns, dealers, distributors, agents, principals,  
 14 suppliers, vendors, issuers, licensees, and joint ventures, and their respective future,  
 15 present, and former officers, directors, employees, partners, general partners, limited  
 16 partners, members, managers, agents, shareholders (in their capacity as shareholders) and  
 17 legal representatives, and the predecessors, successors, heirs, executors, administrators,  
 18 and assigns of each of the foregoing.” (*Id.* at 9.)

19 Kia will employ a third-party to administer this settlement, while Hyundai intends  
 20 to self-administer. (Hyundai Self-Administration Supp. Brief at 1, 1 n.2.) In either case,  
 21 Defendants “shall be responsible for all costs of Class notice and settlement  
 22 administration.” (*Id.* at 20-21.) Defendants have also agreed to pay an award of attorneys’  
 23 fees, costs, and Class Representative service payments, “separate and apart from, and in  
 24 addition to, the relief provided to the Class.” (Mot. at 11; Revised Settlement Agreement  
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26 <sup>7</sup> “The Settlement Agreement and release do not release claims for (i) death, (ii) personal  
 27 injury, (iii) damage to tangible property other than a Class Vehicle, or (iv) subrogation.”  
 28 (Settlement Agreement at 28.)



1 at 27.) The parties have yet to negotiate the size of that award and if they are unable to  
 2 reach an agreement, they will submit the issue to the Court. (Revised Settlement  
 3 Agreement at 27.)

4 The Settlement Agreement also describes the manner in which notice will be  
 5 disseminated to the Class. Defendants shall ensure that no later than the Notice Date,  
 6 notice will be distributed via U.S. mail, email, and the dedicated settlement websites. (*Id.*  
 7 at 24; *see also* Hyundai Self-Administration Supp. Brief at 3-4.) The direct mailing  
 8 campaign will deliver (1) the Long Form Notice and (2) a Claim Form to all “reasonably  
 9 identifiable” Class Members. (Revised Settlement Agreement at 24.) To identify Class  
 10 Members names and most current addresses, Defendants or their elected administrator will  
 11 provide all Class Vehicles VINs, and the known names and addresses of those vehicles’  
 12 owners and lessees, to R.L. Polk & Company or a similar entity, such as IHS Markit. (*Id.*)  
 13 That entity, through the use of that data, will compile a notice mailing list, validated  
 14 through a U.S.P.S. National Change of Address database search to determine Class  
 15 Member’s most recent addresses. (*Id.* at 25.) In response to any mailed notice that is  
 16 returned as undeliverable, Defendants will, using information in their customer databases,  
 17 make further efforts to obtain a deliverable address. (*Id.*) The Long Form Notice and  
 18 Claim Form will also be sent to all known Class Member email addresses. (*Id.*) Those  
 19 documents, and additional settlement-related information, will be accessible on the  
 20 dedicated settlement websites, links to which will be placed on Defendants’ websites:  
 21 [www.hyundaiusa.com/myhyundai](http://www.hyundaiusa.com/myhyundai) and [www.owners.kia.com](http://www.owners.kia.com). (*Id.*)

22 In order to obtain most forms of consideration offered under the proposed  
 23 settlement, Class Members must submit a Claim Form within ninety days of the date of the  
 24 Final Approval Order<sup>8</sup>. (*See id.* 10-20.) However, there is no such limitation on the  
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26  
 27 <sup>8</sup> For compensation sought due to loss of vehicle by engine fire, Class Members may submit a  
 28 Claim Form within ninety days of the date of the Final Approval Order or, for losses occurring  
 (footnote continued)



1 benefits conferred to the Class Members under the lifetime warranty coverage provided for  
 2 the engine short block. (*Id.* at 10-11.) Claim Forms are to be submitted via U.S. mail,  
 3 email, or through the dedicated settlement websites. (*Id.* at 21.) Upon receipt of any  
 4 Claim Form, Defendants, or their chosen administrator, shall review the Claim<sup>9</sup> for  
 5 compliance with the conditions for payment set forth in the Settlement Agreement, and  
 6 within sixty days, notify the Claimant of the review's outcome and the amount in which  
 7 the Claimant will be reimbursed. (*Id.* at 21-22.) Claimants shall thereafter have thirty-five  
 8 days to attempt to cure any deficiencies identified in their original claim, and upon receipt  
 9 of the cure attempt, Defendants or their chosen administrator shall, with thirty-five days,  
 10 notify the Claimant of the final determination on their claim. (*Id.* at 22.) Within sixty days  
 11 of receipt of the final determination, a Claimant may seek arbitration of their claim. (*Id.*)  
 12 For each Claim that results in a reimbursement payment, Defendants will mail to the  
 13 Claimant, within thirty days of the Effective Date, a check or debit card, at the Class  
 14 Member's request. (*Id.* at 23.)

15 Plaintiffs now move for preliminary approval of the proposed settlement. (Mot.)  
 16 Plaintiffs contend that the proposed settlement was "thoroughly negotiated" and is fair,  
 17 reasonable, adequate, and desirable to the Settlement Class. (*Id.* at 3, 11, 15.)  
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22 after that date, within ninety days of the occurrence of the engine compartment fire. (Revised  
 23 Settlement Agreement at 19.)

24 <sup>9</sup> In its Supplemental Brief on Self-Administration Hyundai provided additional detail on this  
 25 review process. (*See* Hyundai Self-Administration Supp. Brief at 4-5, Doc. 127.) Hyundai will  
 26 retain third-party vendor JNR Adjustment Company, to conduct an initial review of claims and  
 27 refer less "straightforward" claims to the Hyundai customer service department for further  
 28 analysis. (*Id.* at 4; Lee Decl. ¶ 6, Doc. 127-1.) JNR will commit approximately fifty employees to  
 this review process while Hyundai has prepared fifty dedicated customer service representatives to  
 conduct reviews, reserving capacity to add twenty representatives. (Hyundai Self-Administration  
 Supp. Brief at 5; Lee Decl. ¶¶ 5, 8.)

1        **II. CONDITIONAL CERTIFICATION OF THE CLASS**

2        Plaintiffs request that the Court preliminarily certify the proposed Settlement Class  
3 for settlement purposes under Rule 23(a) and 23(b)(3). (Mot. at 19-23.)

4        “A party seeking class certification must satisfy the requirements of Federal Rule of  
5 Civil Procedure 23(a) and the requirements of at least one of the categories under Rule  
6 23(b).” *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 542 (9th Cir. 2013). Rule 23(a)  
7 “requires a party seeking class certification to satisfy four requirements: numerosity,  
8 commonality, typicality, and adequacy of representation.” *Id.* (citing *Wal-Mart Stores,*  
9 *Inc. v. Dukes*, 564 U.S. 338, 349 (2011)). Rule 23(a) provides:

10        One or more members of a class may sue or be sued as representative parties  
11 on behalf of all members only if:

12        (1) the class is so numerous that joinder of all members is impracticable;

13        (2) there are questions of law or fact common to the class;

14        (3) the claims or defenses of the representative parties are typical of the  
15 claims or defenses of the class; and

16        (4) the representative parties will fairly and adequately protect the interests  
17 of the class.

18 Fed. R. Civ. P. 23(a).

19        “Rule 23 does not set forth a mere pleading standard. A party seeking class  
20 certification must affirmatively demonstrate his compliance with the Rule—that is, he  
21 must be prepared to prove that there are *in fact* sufficiently numerous parties, common  
22 questions of law or fact, etc.” *Dukes*, 564 U.S. at 350. This requires a district court to  
23 conduct a “rigorous analysis” that frequently “will entail some overlap with the merits of  
24 the plaintiff’s underlying claim.” *Id.* at 350–51.

25        “Second, the proposed class must satisfy at least one of the three requirements listed  
26 in Rule 23(b).” *Id.* at 345. Here, Plaintiffs seek certification of the class under Rule  
27 23(b)(3), which permits maintenance of a class action if “the court finds that the questions  
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1 of law or fact common to class members predominate over any questions affecting only  
2 individual members, and that a class action is superior to other available methods for fairly  
3 and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

4  
5 **A. The Proposed Class Meets All Rule 23(a) Requirements**

6 **1. Numerosity**

7 Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is  
8 impracticable.” Fed. R. Civ. P. 23(a)(1). “The Ninth Circuit has required at least fifteen  
9 members, to certify a class, and classes of at least forty members are usually found to have  
10 satisfied the numerosity requirement.” *Makaron v. Enagic USA, Inc.*, 324 F.R.D. 228, 232  
11 (C.D. Cal. 2018). By Plaintiffs’ calculations, the Class Vehicles number 4.1 million,  
12 meaning that the settlement class certainly satisfies the numerosity requirement. (Mot. at  
13 20.)

14 **2. Commonality**

15 Rule 23(a)(2) requires that “there are questions of law or fact common to the class.”  
16 Fed. R. Civ. P. 23(a)(2). “Commonality requires the plaintiff to demonstrate that the class  
17 members have suffered the same injury.” *Dukes*, 564 U.S. at 349–50 (citation and internal  
18 quotation marks omitted). The plaintiff must allege that the class injuries “depend upon a  
19 common contention” that is “capable of classwide resolution.” *Id.* at 350. In other words,  
20 the “determination of [the common contention’s] truth or falsity will resolve an issue that  
21 is central to the validity of each one of the claims in one stroke.” *Id.* “What matters to  
22 class certification . . . is not the raising of common questions—even in droves—but, rather  
23 the capacity of a classwide proceeding to generate common *answers* apt to drive the  
24 resolution of the litigation.” *Id.* (internal quotation marks and citation omitted).

25 Here, the causes of action raise a variety of questions common to the Settlement  
26 Class, including: (i) whether the Class Vehicles’ engines all suffered the same risks arising  
27 from Defendants’ unreasonable acts and omissions in the manufacturing and production of  
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1 certain Theta II GDI engines and its components (“defective engines”); (ii) whether the  
2 defective engines can cause catastrophic engine failure and potentially result in engine  
3 fires; (iii) whether and when Defendants knew of the defective engines; (iv) whether a  
4 reasonable consumer would consider the defective engine and its consequences to be  
5 material; (v) whether the defective engine implicates safety concerns; and (vi) whether  
6 Defendants’ conduct violates the consumer protection statutes alleged, and the terms of  
7 their warranties. Accordingly, Plaintiffs easily satisfy the commonality requirement. *See*  
8 *Wolin v. Jaguar Land Rover North America, LLC*, 617 F.3d 1168, 1173 (9th Cir. 2010).

### 9           **3.       Typicality**

10           Rule 23(a)(3) requires “the claims or defenses of the representative parties [to be]  
11 typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). “[U]nder the  
12 rule’s permissive standards, representative claims are ‘typical’ if they are reasonably  
13 coextensive with those of absent class members; they need not be substantially identical.”  
14 *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571, 613 (9th Cir. 2010) (en banc) (quoting  
15 *Hanlon v. Chrysler Corp*, 150 F.3d 1011, 1020 (9th Cir. 1998)), *rev’d on other grounds*,  
16 564 U.S. 338 (2011). As to the representative, “[t]ypicality requires that the named  
17 plaintiffs be members of the class they represent.” *Id.* (citing *Gen. Tech. Co. of Sw. v.*  
18 *Falcon*, 457 U.S. 147, 156 (1982)). The commonality, typicality, and adequacy-of-  
19 representation requirements “tend to merge” with each other. *Dukes*, 564 U.S. at 349 n.5  
20 (citing *Falcon*, 457 U.S. at 157–58 n.13).

21           In the motion at bar, Plaintiffs request that they be appointed class representatives.  
22 (Mot. at 1.) Here, Plaintiffs’ claims arise from the same common course of conduct and  
23 events as the claims of all Class Members. Plaintiffs and the Class Members are all  
24 purchasers or lessees of Class Vehicles utilizing GDI Engines that suffer from the same  
25 alleged latent defect. (*Id.* at 20-21.) And as Plaintiffs point out, “[t]ypicality can be  
26 satisfied despite different factual circumstances surrounding the manifestation of the  
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1 defect.” *Wolin*, 617 F.3d at 1175. Accordingly, Plaintiffs satisfy the typicality  
2 requirement.

3 **4. Adequacy**

4 Rule 23(a)(4) permits certification of a class action only if “the representative  
5 parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P.  
6 23(a)(4). “Resolution of two questions determines legal adequacy: (1) do the named  
7 plaintiffs and their counsel have any conflicts of interest with other class members and  
8 (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of  
9 the class?” *Hanlon*, 150 F.3d at 1020.

10 Again, Plaintiffs’ claims arise out of the same set of facts as the claims for the  
11 proposed Settlement Class. Thus, their interest in obtaining the maximum recovery is  
12 coextensive with the interests of the Class Members. Further Plaintiffs assert that they and  
13 their counsel have vigorously litigated and negotiated this action and will continue to do  
14 so. (Mot. at 21.) The Court notes that Plaintiffs seek service awards of “less than \$5,000  
15 each.” (See Revised Settlement Agreement at 10-20.) Courts recognize a potential  
16 conflict of interest between the named plaintiffs and the class when “there is a large  
17 difference between the enhancement award and individual class member recovery.”  
18 *Mansfield v. Sw. Airlines Co.*, No. 13CV2337 DMS (KSC), 2015 WL 13651284, at \*7  
19 (S.D. Cal. Apr. 21, 2015). While the proposed service awards do not appear to pose any  
20 problem in this instance, at the final approval stage, the Court will nevertheless “be  
21 vigilant in scrutinizing all incentive awards to determine whether they [impact] the  
22 adequacy of the class representatives.” *Radcliffe v. Experian Info. Sols. Inc.*, 715 F.3d  
23 1157, 1163 (9th Cir. 2013). At this preliminary stage, and in the absence of any apparent  
24 conflict, the Court concludes that Plaintiffs are adequate Class Representatives.

1           **B. The Proposed Class Meets the Rule 23(b) Requirements**

2           Plaintiffs seek certification under Rule 23(b)(3). (Mot. at 21-23.) For the reasons  
3 set forth below, the Court holds that certification of the proposed Settlement Class is  
4 appropriate.

5           Under Rule 23(b)(3), a class action may be maintained if: “[1] the court finds that  
6 the questions of law or fact common to class members *predominate* over any questions  
7 affecting only individual members, and [2] that a class action is *superior* to other available  
8 methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. R. 23(b)(3)  
9 (emphases added). When examining a class that seeks certification under Rule 23(b)(3),  
10 the Court may consider:

11           (A) the class members’ interests in individually controlling the prosecution  
12 or defense of separate actions;

13           (B) the extent and nature of any litigation concerning the controversy  
14 already begun by or against class members;

15           (C) the desirability or undesirability of concentrating the litigation of the  
16 claims in the particular forum; and

17           (D) the likely difficulties in managing a class action.  
18

19           *Id.* The Court finds that Plaintiffs’ proposed Class satisfies both the predominance  
20 and superiority requirements.

21           **1. Predominance**

22           “[T]he predominance analysis under Rule 23(b)(3) focuses on the relationship  
23 between the common and individual issues in the case, and tests whether the proposed  
24 class is sufficiently cohesive to warrant adjudication by representation.” *Abdullah v. U.S.*  
25 *Sec. Associates, Inc.*, 731 F.3d 952, 964 (9th Cir. 2013) (citations and internal quotation  
26 marks omitted). “Rule 23(b)(3) requires [only] a showing that questions common to the  
27  
28

1 class predominate, not that those questions will be answered, on the merits, in favor of the  
2 class.” *Id.* (alterations in original).

3 Here, as discussed above, the Class Members’ claims are all tied to Defendants’  
4 actions in connection with the GDI Engines and the sale and leasing of the Class Vehicles.  
5 (Mot. at 21-22.) If the GDI Engine contains an inherent latent defect, then all Class  
6 Members have a range of identical consequential claims. “A common nucleus of facts and  
7 potential legal remedies dominates this litigation.” *Hanlon*, 150 F.3d at 1022 (finding  
8 predominance satisfied in analogous circumstances). Thus, common questions will  
9 predominate.

## 10 **2. Superiority**

11 The Court further finds that a class action would be a superior method of  
12 adjudicating Plaintiffs’ claims for the proposed Class. “The superiority inquiry under Rule  
13 23(b)(3) requires determination of whether the objectives of the particular class action  
14 procedure will be achieved in the particular case.” *Hanlon*, 150 F.3d at 1023. “This  
15 determination necessarily involves a comparative evaluation of alternative mechanisms of  
16 dispute resolution.” *Id.* Here, if each member of the proposed Class pursued a claim  
17 individually, the judicial system would be heavily burdened and would run afoul of Rule  
18 23’s focus on efficiency and judicial economy. *See Vinole v. Countrywide Home Loans,*  
19 *Inc.*, 571 F.3d 935, 946 (9th Cir. 2009) (“The overarching focus remains whether trial by  
20 class representation would further the goals of efficiency and judicial economy”). Further,  
21 litigation costs would likely exceed potential recovery if each Class Member litigated  
22 individually. “Where recovery on an individual basis would be dwarfed by the cost of  
23 litigating on an individual basis, this factor weighs in favor of class certification.” *Wolin v.*  
24 *Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (citations omitted).

25 In light of the number of Class Vehicles at issue here, and considering the non-  
26 exclusive factors under Rule 23(b)(3)(A)–(D), the Court finds that Class Members’  
27 potential interests in individually controlling the prosecution of separate actions and the  
28



1 potential difficulties in managing the class action do not outweigh the desirability of  
2 concentrating this matter in one litigation. See Fed. R. Civ. P. 23(b)(3)(A), (C), (D).  
3 Therefore, the Court finds that the proposed Class may be certified under Rule 23(b)(3).

4 **C. Rule 23(g) – Appointment of Class Counsel**

5 Under Rule 23(g), “a court that certifies a class must appoint class counsel.” Fed.  
6 R. Civ. P. 23(g)(1). The Court must consider “(i) the work counsel has done in identifying  
7 or investigating potential claims in the action; (ii) counsel’s experience in handling class  
8 actions, other complex litigation, and the types of claims asserted in the action; (iii)  
9 counsel’s knowledge of the applicable law; and (iv) the resources that counsel will commit  
10 to representing the class.” Fed. R. Civ. P. 23(g)(1)(A).

11 Here, Plaintiffs ask the Court to appoint Matthew D. Schelkopf of Sauder  
12 Schelkopf, Adam Gonnelli of The Sultz Law Group, Bonner Walsh of Walsh PLLC, and  
13 Steve W. Berman of Hagens Berman Sobol Shapiro LLP as Class Counsel. (Mot. at 1, 26-  
14 27.) Based on Defendants’ Notice of Non-Opposition, it appears that they do not object to  
15 this appointment. (Doc. 116.) In connection with this motion, Plaintiffs have filed law  
16 firm resumes for Sauder Schelkopf and Hagens Berman. Schelkopf and Berman, as well  
17 as their firms, have extensive experience in litigating consumer class actions. (See  
18 Schelkopf Decl. ¶¶ 4-11, Doc. 112-1; Sauder Schelkopf Firm Resume, Schelkopf Decl. Ex.  
19 2, Doc. 112-3; Berman Decl ¶ 3, Doc. 112-4; Hagens Berman Firm Resume, attached to  
20 Berman Decl., Doc. 112-4.) Further, Plaintiffs submitted documentation of the similar  
21 experience of Gonnelli and Walsh, and their firms, in connection with Plaintiffs’ prior  
22 Motion for the Appointment of Interim Class Counsel. (See Gonnelli Decl. ¶¶ 4-6 Doc.  
23 69-4; Sultz Law Firm Resume, Doc. 69-5; Interim Class Counsel Mem. at 5-9, Doc. 69-1.)  
24 From this experience, it appears Schelkopf, Gonnelli, Walsh, and Berman each have  
25 extensive knowledge of the applicable law in this area. Based on the experience and work  
26 of Plaintiffs’ counsel, the Court concludes that they have satisfied the adequacy  
27  
28

1 requirement. The Court therefore appoints Matthew D. Schelkopf, Adam Gonnelli,  
2 Bonner Walsh, and Steve W. Berman as Class Counsel in this action.

3 Having found that the proposed Class satisfies the remaining elements of Rule  
4 23(a), the Court conditionally certifies the Class for settlement purposes only.

5  
6 **III. PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

7 To preliminarily approve a proposed class-action settlement, Rule 23(e)(2) requires  
8 the Court to determine whether the proposed settlement is fair, reasonable, and adequate.  
9 Fed. R. Civ. P. 23(e)(2). In turn, review of a proposed settlement typically proceeds in two  
10 stages, with preliminary approval followed by a final fairness hearing. Federal Judicial  
11 Center, *Manual for Complex Litigation*, § 21.632 (4th ed. 2004).

12 “To determine whether a settlement agreement meets these standards, a district  
13 court must consider a number of factors, including: the strength of plaintiffs’ case; the risk,  
14 expense, complexity, and likely duration of further litigation; the risk of maintaining class  
15 action status throughout the trial;<sup>10</sup> the amount offered in settlement; the extent of  
16 discovery completed, and the stage of the proceedings; the experience and views of  
17 counsel; the presence of a governmental participant;<sup>11</sup> and the reaction of the class  
18 members to the proposed settlement.” *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir.  
19 2003) (internal citation and quotation marks omitted). “The relative degree of importance  
20 to be attached to any particular factor will depend upon and be dictated by the nature of the  
21 claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances  
22 presented by each individual case.” *Officers for Justice v. Civil Serv. Comm’n of City &*  
23 *Cty. of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982). “It is the settlement taken as a whole,

24  
25 <sup>10</sup> Because the class has not been certified other than for settlement purposes, this factor does  
26 not apply in this case.

27 <sup>11</sup> While the National Highway Traffic Safety Administration oversaw Defendants’ prior  
28 voluntary recalls of certain Class Vehicles, (Mot. at 18-19), this factor does not directly apply in  
this case.

1 rather than the individual component parts, that must be examined for overall fairness,’  
2 and ‘the settlement must stand or fall in its entirety.’” *Staton*, 327 F.3d at 960 (quoting  
3 *Hanlon*, 150 F.3d at 1026) (alterations omitted).

4 In addition to these factors, where “a settlement agreement is negotiated *prior* to  
5 formal class certification,” the Court must also satisfy itself that “the settlement is not the  
6 product of collusion among the negotiating parties.” *In re Bluetooth Headset Prods. Liab.*  
7 *Litig.*, 654 F.3d 935, 946-47 (9th Cir. 2011) (quotation marks and citation omitted).  
8 Accordingly, the Court must look for explicit collusion and “more subtle signs that class  
9 counsel have allowed pursuit of their own self-interests and that of certain class members  
10 to infect the negotiations.” *Id.* at 947. Such signs include (1) “when counsel receive a  
11 disproportionate distribution of the settlement,” (2) “when the parties negotiate a ‘clear  
12 sailing’ arrangement providing for the payment of attorneys’ fees separate and apart from  
13 class funds,” and (3) “when the parties arrange for fees not awarded to revert to defendants  
14 rather than be added to the class fund.” *Id.* (quotation marks and citations omitted).

15 At this preliminary stage and because Class Members will receive an opportunity to  
16 be heard on the settlement, “a full fairness analysis is unnecessary . . . .” *Alberto v. GMRI,*  
17 *Inc.*, 252 F.R.D. 652, 665 (E.D. Cal. 2008). Instead, preliminary approval and notice of  
18 the settlement terms to the proposed class are appropriate where “[1] the proposed  
19 settlement appears to be the product of serious, informed, non-collusive negotiations, [2]  
20 has no obvious deficiencies, [3] does not improperly grant preferential treatment to class  
21 representatives or segments of the class, and [4] falls within the range of *possible* approval  
22 . . . .” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)  
23 (internal quotation marks and citation omitted) (emphasis added); *see also Acosta v. Trans*  
24 *Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) (“To determine whether preliminary  
25 approval is appropriate, the settlement need only be *potentially* fair, as the Court will make  
26 a final determination of its adequacy at the hearing on the Final Approval, after such time  
27 as any party has had a chance to object and/or opt out.”) (emphasis in original).

1 In evaluating all applicable factors below, the Court finds that the proposed  
2 settlement agreement should be preliminarily approved.

3 **A. Strength of Plaintiffs' Case**

4 The claims at issue involve Defendants' alleged negligent production of the GDI  
5 Engines with a significant latent defect and subsequent concealment of that defect while  
6 marketing and selling Class Vehicles powered by those engines. While Plaintiffs state  
7 they are prepared to "mount a formidable case that Defendants violated numerous state  
8 consumer protection statutes, breached state and federal warranty laws, and engaged in  
9 fraud," (Mot. at 14), Defendants deny any liability (Revised Settlement Agreement at 2-3).  
10 In addition, Defendants have already filed comprehensive Motions to Dismiss under Rules  
11 8, 9, and 12(b)(6). (Docs. 86, 88.) Further, Plaintiffs acknowledge that they may be  
12 unable to make some of the factual showings required to succeed on the claims brought,  
13 Defendants may argue that they did not conceal any material information, and Defendants  
14 might otherwise successfully "whittle down [their] overall liability" to the Class if  
15 litigation were to proceed. (Mot. at 14.) They also note that the passage of time, during a  
16 potentially years-long litigation, would reduce the value of consideration received by the  
17 Class as benefits of the lifetime warranty would be reduced, and vehicle ownership and  
18 service records may become harder to locate. (*Id.* at 14-15.) The Court finds that these  
19 considerations, as well as the inherent risk of litigation, weigh in favor of granting  
20 preliminary approval.

21 **B. Risk, Complexity, and Likely Duration of Further Litigation**

22 Plaintiffs argue that continued class action litigation would be expensive, inherently  
23 uncertain, and lengthy. (*Id.* at 15.) They also assert that settling allows Class Members to  
24 immediately obtain consideration and repairs for their allegedly dangerously defective  
25 Class Vehicles. (*Id.* at 15.) Settlement eliminates the risks inherent in certifying a class,  
26 prevailing at trial, and withstanding any subsequent appeals, and it may provide the last  
27 opportunity for Class Members to obtain relief. This factor therefore weighs in favor of  
28

1 granting preliminary approval. *See Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221  
2 F.R.D. 523, 526 (C.D. Cal. 2004) (“In most situations, unless the settlement is clearly  
3 inadequate, its acceptance and approval are preferable to lengthy and expensive litigation  
4 with uncertain results.” (citation omitted)).

5 **C. Amount Offered in Settlement**

6 Plaintiffs argues that the “proposed settlement provides Class [M]embers with  
7 virtually everything Plaintiffs sought in their complaints.” (Mot. at 16.) Class Members  
8 are: (1) being warned of the risk of potential engine stalling and seizure; (2) receiving a  
9 lifetime warranty extension for the engine short block; (3) entitled to reimbursement, in  
10 full, for prior repair costs and incidental expenses; (4) entitled to additional goodwill  
11 payments; (5) eligible for compensation if they’ve already traded in their vehicles or lost  
12 confidence in them; and (6) retaining the right, for a limited time, to seek further redress  
13 through arbitration if they are dissatisfied with the outcome of their claims. (*Id.* at 16-17.)  
14 Plaintiffs believe that this is an “excellent result for the Class” and “it is unlikely that trial  
15 would produce a better result.” (*Id.* at 17.)

16 The “Lifetime Warranty extension” in the Settlement Agreement provides the Class  
17 Members with significant value. Such a remedy is “directed at repairing the alleged harm”  
18 and “advances the primary goal of the lawsuit.” *Klee v. Nissan North America, Inc.*, No.  
19 CV 12–08238 AWT (PJWx), 2015 WL 4538426, at \*8 (C.D. Cal. July 7, 2015) (citing  
20 *Kearney v. Hyundai Motor America*, No. SACV 09-1298-JST (MLGx), 2013 WL  
21 3287996, at \*5 (June 28, 2013)) (collecting cases in which extended warranties were  
22 approved in automotive class action settlements); *Corson v. Toyotal Motor Sales U.S.A.,*  
23 *Inc.*, No. CV 12-8499-JGB (VBKx), 2016 WL 1375838, at \*7 (C.D. Cal. Apr. 4, 2016).

24 When analyzing the adequacy of a settlement amount, the Court typically  
25 “consider[s] plaintiffs' expected recovery balanced against the value of the settlement  
26 offer.” *K.H. v. Secretary of Department of Homeland Security*, No. 15-cv-02740-JST,  
27 2018 WL 6606248, at \*4 (N.D. Cal. Dec. 17, 2018). And a “settlement amounting to only  
28

1 a fraction of the potential recovery does not per se render the settlement inadequate or  
2 unfair.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (internal  
3 quotation marks and citation omitted). The parties have not yet quantified either the  
4 proposed settlement’s value or Class Members’ potential recovery, both of which the  
5 Court will require before final approval. However, in light of the comprehensive nature of  
6 the consideration offered as well as the obvious value of the Lifetime Warranty extension,  
7 the Court finds that the amount offered in settlement weighs in favor of approval at this  
8 preliminary stage.

9 The allocation of settlement funds also appears fair, adequate, and reasonable. Each  
10 Class Member is equally entitled to all forms of consideration offered in the proposed  
11 settlement. Considering the difficulties and expenses Class Members would face to  
12 individually pursue litigation and the likelihood that they may otherwise be unaware of  
13 their claims, this weighs in favor of preliminary approval.

14 Finally, the amount of the settlement also appears fair, adequate, and reasonable in  
15 light of the claims released by Plaintiff and Class Members. After the Court noted its  
16 concerns with the breadth of the release originally contemplated, the parties modified the  
17 relevant language. In its present form, the Mutual Release requires Class Members to  
18 release only those claims tied to the facts alleged in the complaints filed in this  
19 consolidated action. (Revised Settlement Agreement at 27-28.) The only claims released  
20 relating to issues of “oil consumption, oil maintenance, and vehicle fires originating in the  
21 engine compartment” are those remedied by the consideration offered in the proposed  
22 settlement. (*Id.* at 28.) The scope of this release weighs in favor of preliminary approval.  
23 *See Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) (“A settlement agreement  
24 may preclude a party from bringing a related claim in the future even though the claim was  
25 not presented and might not have been presentable in the class action, but only where the  
26 released claim is based on the identical factual predicate as that underlying the claims in  
27 the settled class action.”) (internal quotation marks and citation omitted)).  
28

1           **D. Stage of the Proceedings and Extent of Discovery Completed**

2           This factor requires the Court to evaluate whether “the parties have sufficient  
3 information to make an informed decision about settlement.” *Linney v. Cellular Alaska*  
4 *P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998). Discovery can be both formal and informal.  
5 *See Clesceri v. Beach City Investigations & Protective Servs., Inc.*, No. CV-10-3873-JST  
6 (RZx), 2011 WL 320998, at \*9 (C.D. Cal. Jan. 27, 2011). Here, Plaintiffs’ counsel  
7 expended substantial effort in investigating the facts of this case, reviewing technical  
8 information, analyzing the GDI Engines, and consulting with automotive experts. (Mot. at  
9 17.) The parties engaged in “confirmatory discovery” which included the “supervised  
10 tear-down of one named Plaintiff’s vehicle by Kia representatives,” two depositions of  
11 Korean engineers with knowledge of the design and construction of the GDI Engines,  
12 communication with various Class Members, and the review of thousands of pages of  
13 document discovery. (*Id.* at 10-11, 17-18.)

14           Given these facts, the Court concludes that the parties possess sufficient information  
15 to make an informed settlement decision. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d  
16 at 459 (finding plaintiffs had “sufficient information to make an informed decision about  
17 the [s]ettlement” where formal discovery had not been completed but Class Counsel had  
18 “conducted significant investigation, discovery and research, and presented the court with  
19 documentation supporting those services”). Accordingly, this factor weighs in favor of  
20 granting preliminary approval.

21           **E. Experience and Views of Counsel**

22           “Parties represented by competent counsel are better positioned than courts to  
23 produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re*  
24 *Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). As a result, representation  
25 by competent counsel familiar with the law in the relevant area and with “the strengths and  
26 weaknesses of [the parties’] respective positions “suggests the reasonableness of the  
27 settlement.” *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1174 (S.D. Cal.  
28



2007). “On the other hand, recognizing the potential conflict of interest between attorneys and the class they represent, the Court should not blindly follow counsel’s recommendations, but give them appropriate weight in light of all factors surrounding the settlement.” *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979).

As discussed above, Plaintiffs’ counsel have experience serving as plaintiffs’ counsel in automotive class actions, and have endorsed the settlement as fair, reasonable, and adequate. (*See* Schelkopf Decl. ¶ 16, Doc. 112-1; Berman Decl. ¶ 5; Doc. 112-4.) More importantly, at this stage the Court does not detect a conflict of interest between Class Counsel and the Class. Thus, this factor favors preliminary approval.

#### **F. Reaction of Class Members to Proposed Settlement**

Though Plaintiffs have not provided evidence of the Class Members’ reactions to the proposed settlement, the Court recognizes that the lack of such evidence is not uncommon at the preliminary approval stage. The parties have stated that they “will provide the Court with any objections they receive after notice is disseminated.” (Mot. at 19.) Further, before the final fairness hearing, Class Counsel shall submit a sufficient number of declarations from Class Members discussing their reactions to the proposed settlement. A limited number of objections at the time of the fairness hearing raises a presumption that the settlement is favorable to the class. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1043 (finding reaction of class favored approval where court received three objections from 57,630 class members who received notice).

#### **G. Signs of Collusion**

As noted above, because this settlement was reached prior to certification of the class, the Court must be “particularly vigilant” for signs of collusion, including: (1) a disproportionate distribution of the settlement fund to counsel, or when the class receives no monetary compensation but counsel receive an ample award of attorneys’ fees; (2) negotiation of a “clear sailing provision” according to which defendants agree not to oppose an attorney’s fee award up to a certain amount; and (3) an arrangement for funds

1 not awarded to revert to defendants rather than to be added to the common settlement fund.  
2 *In re Bluetooth*, 654 F.3d at 946-47.

3 Plaintiffs state that the proposed settlement is a product of months of arm's-length  
4 bargaining. (Mot. at 10.) The parties have not negotiated a "clear-sailing" agreement  
5 regarding attorneys' fees and costs—to the contrary, they have stated that they will submit  
6 the issue to the Court if they are unable to agree on Class Counsels' attorneys' fees, costs,  
7 and Class Representatives' service awards.<sup>12</sup> (Revised Settlement Agreement at 27.)  
8 Thus, there are no telltale signs of collusion among the parties at the expense of the Class  
9 Members.

10 Though the Court does not approve attorneys' fees at this stage, the Court raises its  
11 concerns with the dearth of information about Class Counsels' attorneys' fees. Plaintiffs  
12 state only that "Defendants have agreed to separately pay an award of attorneys' fees and  
13 costs, [but] the Parties have yet to negotiate them." (Mot. at 10.) To be sure, payment of  
14 Class Counsels' attorneys' fees "separate and apart from" the consideration paid to the  
15 Class reduces concerns that Class Counsel's fees will deprive Class Members of their  
16 recovery. (See Mot. at 11; Revised Settlement Agreement at 27.) But Defendants  
17 presumably have limited resources to settle this entire matter, including both class  
18 recovery and attorneys' fees. Hence, the Court will carefully scrutinize the relationship  
19 between the benefit to the class and any agreement as to attorneys' fees to avoid conflicts  
20 of interest and possible collusion.

21 The Court does not find, however, that the lack of information regarding attorneys'  
22 fees precludes preliminary approval. First, the Court will require Plaintiffs to file their  
23 Motion for Attorneys' Fees, Costs, and Service Awards **thirty (30) days before the**  
24

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25 <sup>12</sup> While the parties have not yet agreed on the Class Representatives' service awards,  
26 "Plaintiffs seek less than \$5,000 for each." (Mot. at 12.) Moreover, any awards, either to Class  
27 Representatives or Class Counsel, must be approved by the Court, even if agreed upon by the  
28 parties.

1 exclusion deadline, such that Class Members will have an opportunity to review Class  
2 Counsels' and Class Representatives' requested award before deciding whether to exclude  
3 themselves from the settlement or otherwise object. Second, whether the parties ultimately  
4 calculate Class Counsels' attorneys based on the lodestar method<sup>13</sup> or as a percentage of  
5 the value of any "common fund," the Court will analyze the requested amount to  
6 determine if any adjustment is necessary.

7 Finally, the Revised Settlement Agreement states that reimbursement payments to  
8 Class Members may be made, at the Class Member's election, via check or debit card.  
9 (Revised Settlement Agreement at 23.) "The value of any debit card shall remain the  
10 property of HMA or KMA unless and until it is expended by the Claimant. Upon  
11 expiration of any debit card, any unexpended funds shall become the permanent property  
12 of HMA or KMA." (*Id.*) The parties offer no justification for the reversionary nature of  
13 these debit card funds. While the Court's concerns are somewhat allayed by Class  
14 Members' ability to choose payment by check, Plaintiffs should be prepared to explain at  
15 final approval the reasonableness of including the reversionary debit card option. Failure  
16 to do so adequately may result in the Court's disapproval of the use of debit cards as an  
17 option.

18 Considering all factors, the Court preliminarily concludes that the settlement is fair,  
19 reasonable, and adequate.

#### 20 21 **IV. CLAIMS ADMINISTRATION**

22 When granting preliminary approval of class action settlements, the Court typically  
23 approves a third-party claims and settlement administrator that the parties have agreed on.  
24

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25 <sup>13</sup> If the parties elect to use the lodestar method, Class Counsel must adequately support its fee  
26 request with detailed billing records as required by the Court's Procedures (See Procedure Page ¶  
27 26, available at <https://www.cacd.uscourts.gov/honorable-josephine-l-staton>) as well as evidence  
28 justifying Class Counsel's requested hourly rate.

1 However, the proposed settlement provides that Defendants “have the option of self-  
2 administering” the settlement. (Revised Settlement Agreement at 21.) The Court has  
3 already made clear its reservations concerning such an arrangement and the incentives that  
4 result when an interested party has autonomous control over the notice campaign and  
5 approval of claims. (*See* Order on Claims Administration.) As the Court noted, “[w]hile it  
6 may be possible for defendants to successfully self-administer relatively straightforward  
7 class action settlements, *see, e.g., Torres v. Pet Extreme*, No. 1:13-CV-01778-LJO-SAB,  
8 2015 WL 224752, at \*6 (E.D. Cal. Jan. 15, 2015),” the parties here must show that it will  
9 work fairly—and transparently—in this case. (*Id.* at 1-2.) The parties provided a  
10 comprehensive response, noting that Kia will retain a third-party settlement administrator  
11 (Hyundai Self-Administration Supp. Brief at 2 n.1.); clarifying its claims review and  
12 administration procedure, in which dissatisfied Class Members may ultimately seek  
13 arbitration through a Better Business Bureau-administered alternate dispute resolution  
14 process (*id.* at 3-5); emphasizing that Class Counsel will receive updates on the review and  
15 disposition of Claims (Supplemental Schelkopf Decl. ¶ 3); and detailing Hyundai’s history  
16 of satisfactorily conducting notice campaigns and self-administering automotive class-  
17 action settlements (*id.* ¶ 4, Hyundai Self-Administration Supp. Brief at 5-7; Lee Decl. ¶ 9,  
18 Doc. 127-1). While Hyundai’s self-administration is not a sufficient reason to withhold  
19 preliminary approval, the Court will examine any objections and Class Member  
20 declarations submitted prior to the Final Fairness Hearing for views on settlement  
21 administration. In addition, the parties, particularly Hyundai, should anticipate that this  
22 Court will require ongoing reporting to the Court as to the claims process and results, and  
23 may require post-distribution accounting reports. Further, Kia shall, **within fourteen (14)**  
24 **days of the date of this Order**, file a supplementary brief (1) identifying its proposed  
25 claims administrator; (2) describing the qualifications of that entity; and (3) detailing the  
26 process by which the administrator will process claims and report on claims’ disposition.

**V. PRELIMINARY APPROVAL OF CLASS NOTICE FORM AND METHOD**

For a class certified under Rule 23(b)(3), “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). However, actual notice is not required. *See Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994).

Pursuant to the settlement, Defendants, or the Settlement Administrator, will, no later than the Notice Date, mail the Long Form Notice and a Claim Form to each reasonably identifiable Class Member. (Revised Settlement Agreement at 24.) Class Members will be identified through use of Defendants’ records, which are to be provided to R.L. Polk & Company, or similar third party entity, such as IHS Markit. (*Id.*) That information will be used to obtain the names and most current addresses of Class Vehicle owners through relevant state agencies. (*Id.*) Before mailing notice, Defendants, or the Settlement Administrator will ensure that address information is as current as possible by conducting an address search via the U.S.P.S. National Change of Address database. (*Id.* at 25.) Further efforts will be made to deliver any individual notice that is returned as undeliverable. (*Id.*) Any Class Members for whom Defendants maintain email addresses are also to receive the Long Form Notice and Claim Form via email. (*Id.*) The email will also contain a hyperlink to the Hyundai and Kia dedicated settlement websites which will contain the Long Form Notice and Claim Form, in addition to other relevant settlement information and documents. (*Id.*)

The Supreme Court has found notice by mail to be sufficient if the notice is “reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *accord Sullivan*, 2011 WL 2600702 at \*8 (quoting *Mullane*). Under the circumstances of this case, notice by mail, email, and dedicated website is a “reasonably calculated” method by which to apprise Class Members of the

1 settlement. The Court finds that the proposed procedure for class notice satisfies these  
2 standards.

3 Plaintiff provided the Court with a copy of the proposed notice and Claim Form.  
4 (Class Notice, Schelkopf Decl. Ex. 1 at 41-57, Doc. 112-2; Revised Hyundai Notice, Doc.  
5 128-3; Revised Kia Notice, Doc. 128-5.) Under Rule 23, the notice must include, in a  
6 manner that is understandable to potential class members: “(i) the nature of the action; (ii)  
7 the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a  
8 class member may enter an appearance through an attorney if the member so desires; (v)  
9 that the court will exclude from the class any member who requests exclusion; (vi) the  
10 time and manner for requesting exclusion; and (vii) the binding effect of a class judgment  
11 on members under Rule 23(c)(3).” Fed. R. Civ. P. 23(c)(2)(B). The proposed notice  
12 includes this necessary information.

13 The Court, however, requires the notice to be modified as follows:

- 14 • Under the initial chart (“Your Legal Rights and Options in This Settlement”)  
15 and Question 19 (“How do I tell the Court if I do not like the Settlement?”), the  
16 notice must eliminate any reference to filing a written objection with the Court.  
17 Plaintiffs’ counsel are responsible for filing, in connection with Plaintiffs’  
18 motion for final approval, any objections along with a brief responding to such  
19 objections. Accordingly, the notice should instruct Class Members to object by  
20 mailing a written objection to Plaintiffs’ counsel only, and Plaintiffs’ counsel  
21 shall be responsible for ensuring that any objections are shared with counsel for  
22 Defendants and where applicable, Kia’s claims administrator.
- 23 • Under Question 26 (“How do I get more information?”), the notice should also  
24 state that all papers filed in this action will also be available for review via the  
25 Public Access to Court Electronic Resources System (PACER), available online  
26 at <http://www.pacer.gov>. The Kia-specific notice should also identify the  
27  
28

1 contact information of Kia's claims administrator, *i.e.*, its phone number and  
2 address.

3 Subject to the changes discussed above, the Court approves the claim form as well  
4 as the form and method of class notice. The Court ORDERS the parties to file a revised  
5 version of the Class Notice within **fourteen (14) days** of this Order.<sup>14</sup>

6 The Court requires that any motion for attorneys' fees and costs be filed with the  
7 Court **no later than thirty (30) days before** the exclusion deadline. Plaintiffs shall file  
8 their motion for final approval no later than **October 16, 2020**, including a brief  
9 responding to any submitted objections and otherwise summarizing the Class Members'  
10 participation in the settlement and the settlement administration to date.

11  
12 **VI. CONCLUSION**

13 For the reasons discussed above, the Court (1) CONDITIONALLY GRANTS  
14 preliminary approval of the terms of the class action settlement; (2) certifies the proposed  
15 class for settlement purposes; (3) appoints Cara Centko, Jenn Lazar, Christopher Stanczak,  
16 Rose Creps, James Kinnick, Wallace Coats, Maryanne Brogan, Andrea Smolek, Danny  
17 Dickerson, Robert Fockler, Amy Franklin, Donald House, Dave Loomis, Joseph  
18 McCallister, Arron Miller, Ricky Montoya, Lynn North, Mark Rice, Reid Schmitt, James  
19 Smith, and Chris Stackhouse as Class Representatives; (4) appoints Matthew D. Schelkopf  
20 of Sauder Schelkopf, Adam Gonnelli of The Sultzer Law Group, Bonner Walsh of Walsh  
21 PLLC, and Steve W. Berman of Hagens Berman Sobol Shapiro LLP as Class Counsel; (5)  
22 authorizes, for the purposes of identifying Class Members, R.L Polk & Company, or  
23 similar third-party entity, such as IHS Markit, to compile and provide information on Class  
24 Members' names and addresses to Defendants or their designees; and (6) approves the  
25 form and manner of class notice, subject to the changes discussed above. The Court

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26  
27 <sup>14</sup> These changes must be made as to both the Hyundai and Kia Long Form Notices. (Docs.  
28 128-3, 128-5.)



1 ORDERS (1) the parties to file a revised version of the Class Notice and (2) to identify and  
2 provide information on the adequacy of Kia's proposed claims administrator, **within**  
3 **fourteen (14) days of the date of this Order.**

4 The Court SETS the following schedule which shall govern the class action  
5 settlement proceedings:

6 (i) Defendants shall cause individual notice, in the form approved by the  
7 Court, to be mailed via first-class mail to all reasonably identifiable Class  
8 Members, to be emailed to those Class Members with known email addresses,  
9 and to be posted on the dedicated settlement websites, within **thirty (30) days**  
10 of the Court's approval of the revised Class Notice (the "Notice Date").

11 (ii) Class Members must mail any letter objecting to or opting out of the  
12 proposed settlement within **sixty (60) days** after the Notice Date.

13 (iii) Plaintiffs shall file their Motion for Attorneys' Fees, Costs, and Class  
14 Representative Service Awards **no later than thirty (30) days before** the exclusion  
15 deadline.

16 (iv) The Parties shall submit motions for final approval of the proposed  
17 settlement, including any exhibits or attachments thereto, **on or before**  
18 **October 16, 2020.**

19 (v) The Fairness Hearing shall be held on **November 13, 2020 at 10:30 a.m.,**  
20 to determine whether the settlement should be finally approved as fair,  
21 reasonable, and adequate to the Class Members.

22 The dates set forth above in items (ii) and (iii) shall be included in the Long Form Notice  
23 distributed to Class Members. The Court reserves the right to continue the date of the  
24 Final Fairness Hearing without further notice to Class Members.

25 Finally, the Court noted at the December 13, 2019 hearing on this Motion, that on  
26 the CM/ECF docket for this case as well as in various filings in this matter, Defendants'  
27 counsel, Shon Morgan, is listed as representing Defendants Hyundai Motor America, Inc.,  
28

1 Hyundai Motor Company, Ltd., and Kia Motors America, Inc., but not Defendant Kia  
2 Motors Corporation. At that hearing, Mr. Morgan affirmed that he is representing Kia  
3 Motors Corporation in this litigation. As such, the Court directed Mr. Morgan to take  
4 whatever steps necessary to ensure that the docket and future filings adequately reflect the  
5 nature of his representation. As of the date of this Order, the docket still does not indicate  
6 that Mr. Morgan is counsel of record for Kia Motors Corporation. The Court again  
7 DIRECTS Mr. Morgan to remedy this inaccuracy. The Court will not grant final approval  
8 of this proposed settlement unless the appropriate actions are taken.

9  
10  
11 DATED: May 06, 2020



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JOSEPHINE L. STATON  
UNITED STATES DISTRICT JUDGE